

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TIMOTHY L. DEWEY,

Plaintiff,

v.

CAROLYN W. COLVIN,

Defendant.

CASE NO. C12-5788-JCC

ORDER ADOPTING REPORT AND
RECOMMENDATION AND
AFFIRMING COMMISSIONER'S
DECISION

This matter comes before the Court on Plaintiff's objections to the Report and Recommendation ("R&R") (Dkt. No. 19). Having thoroughly considered the parties' briefing and the relevant record, the Court hereby REJECTS the objections (Dkt. No. 19) and ADOPTS the R&R (Dkt. No. 18) for the reasons explained herein.

A district court reviews *de novo* the portions of an R&R to which a party has filed timely objections. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). Plaintiff has filed objections to all of the R&R's recommendations and conclusions. (*See* Dkt. No. 19.) As is evident from those objections, however, they merely restate arguments that Plaintiff made to the Magistrate Judge, all of which are thoroughly addressed by the R&R. Each of Plaintiff's objections begins by referring the Court to the pages in Plaintiff's opening brief that addresses the argument found in

1 the objection.¹ Nonetheless, the Court has independently reviewed Plaintiff's arguments and the
2 relevant record. Having done so, the Court agrees with the analysis and conclusions in the R&R
3 and ORDERS as follows:

4 (1) The Court adopts the Report and Recommendation (Dkt. No. 18).

5 (2) The final decision of the Commissioner is AFFIRMED and this case is
6 DISMISSED with prejudice.

7 (3) The Clerk of the Court is respectfully directed to send copies of this Order to the
8 parties and to the Honorable James P. Donohue, United States Magistrate Judge.

9 DATED this 16th day of September 2013.

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John C. Coughenour
UNITED STATES DISTRICT JUDGE

21 ¹ To the extent that it differs from his prior argument regarding the testimony of the
22 vocational expert ("VE") at step five of the sequential disability analysis, the Court rejects
23 Plaintiff's argument based on *Massachi v. Astrue*, 486 F.3d 1149 (9th Cir. 2007). Consistent with
24 SSR 00-4p, *Massachi* requires the ALJ to determine whether a conflict exists between the
25 testimony of the VE and the *Dictionary of Occupational Titles* ("DOT") by asking the VE if his
26 or her testimony is consistent with the DOT. *Id.* at 1150, 1153. If a conflict exists, then the ALJ
must determine whether the VE's explanation for the conflict is reasonable. *Id.* at 1153. Here the
ALJ twice asked the VE whether his testimony was consistent with the DOT. (AR 74, 77.) Both
times, the VE confirmed that it was. (*Id.*) Accordingly, there was no "conflict" for the ALJ to
resolve.